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Raises (but no reforms) for Buffalo police

By Geoff Kelly



Raises (but no reforms) for Buffalo police.



Buffalo police just got a raise. The city got nothing — no concessions, no reforms — in exchange.

That's the upshot of more than three years of negotiations between the Brown administration and the Buffalo Police Benevolent Association, whose contract expired in July 2019. When talks stalled in early 2021, the dispute put in the hands of a state arbitrator, who was empowered only to deal with pay.

Reform — the mantra of demonstrators and elected officials alike in the summer of 2020 — was sidelined.

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though the administration has not yet asked the Common Council to approve the spending.

In fact, the chair of the Council's Police Oversight Committee told Investigative Post the Council had not been informed of the award at all, although it was issued more than two months ago.

"No one has told us anything," Niagara District Council Member David Rivera said in a phone call Wednesday. "I was just talking to [Finance Committee Chair Rasheed] Wyatt yesterday, and he hadn't heard about it, either."

The PBA and the city spent nearly a year-and-a-half in mediated talks before the union threw in the towel, asking in February 2021 for an arbitration panel to resolve the issue.

The mediated talks centered on wages and benefits, but also included concessions police reform advocates and elected officials urged the city to seek in a new police contract.

For example:

- Restoring a residency requirement for new officers that expired with the contract in July 2019.
- Annual performance reviews for officers, as required to maintain the department's state certification.
- Greater flexibility in managing shift assignments and staffing levels.
- More training in methods of de-escalating potentially violent encounters with the public.

None of these issues were on the table during the arbitration hearings. All the arbitration panel could talk about was money: how much police should get and how much the city could afford.

Despite the award, the city and the union have not struck a deal on a new contract. Both sides told Investigative Post they are back at the table, working toward a new agreement.

It's not quite a return to square one, but for right now that is the situation: The PBA got its raises. The city got nothing in return.

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were filled with demonstrators protesting police misconduct. Common Council President Darius Pridgen urged the Brown administration not to waste the opportunity to seek meaningful changes in the police department.

“If we’re looking for a new model, this contract negotiation is an opportune time,” Pridgen said that summer at a meeting of the Common Council’s Police Oversight Committee.

“There are some issues that need to be a part of the contract,” he said. “I don’t want to hear about what can’t be done.”

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That same summer, Investigative Post analyzed Buffalo’s police contract.

It wasn’t easy: The behemoth of a document comprises nearly 400 pages of agreements, amendments, arbitration awards and memoranda dating back three decades. We enlisted labor lawyers, union officials, Common Council members and community activists to help us.

We determined the contract:

- Makes it tougher to discipline officers for misconduct than the protections afforded police under state law or the City Charter.
- Prescribes a seniority system that dictates years on the job, not management discretion, determines assignments, promotions and overtime.
- Requires all but a handful of the department’s uniformed officers to belong to the PBA, including those working the Internal Affairs unit, charged with investigating allegations of misconduct by their fellow union members.
- Does not permit annual performance reviews of officers, which are required if the department is to retain the state accreditation it was awarded for the first time three years ago.
- No longer includes a residency requirement for new officers.

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PBA President John Evans, speaking to Investigative Post in July 2020.

Evans told Investigative Post he'd taken part in three contract negotiations and all boiled down to wages and benefits. He claimed the Brown administration had never tried to bargain changes in the way police are disciplined, for example, or to the seniority system that limits the commissioner's managerial rights.

As calls for police reform grew louder, Brown tried to redirect dissatisfaction with law enforcement policies and practices toward the PBA.

"The police union is on the wrong side of history," Brown told MSNBC's Rachel Maddow, after two Buffalo police officers pushed 75-year-old protestor Martin Gugino to the ground, fracturing his skull.

"They have been a real barrier to the reform of policing in the City of Buffalo."

"I'd love to see [the mayor] cite some examples of how the union has been obstructionist to reform or changes," Evans responded. "I don't know that anything has ever been proposed to us to be obstructionist about."

The mayor and the police department enacted modest policy reforms in response to the 2020 protests. Brown ordered officers to issue appearance tickets for most nonviolent crimes and

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Some police reform advocates said the mayor's initiatives fell short of the mark. None required changes in the police contract.

Rivera, the Police Oversight Committee chair — and a retired police detective — told Investigative Post he understood the Brown administration hoped to win other reforms and concessions during negotiations.

For example, he said, there was discussion of requiring periodic certification of officers to ensure they remain fit for duty and their training is up to date. That measure would require a concession from the union, not just an executive order.

But such contractual reforms seem to have died on the negotiating table, if they were ever on the table at all.

In the end, the talks stalled over money. All discussion of other matters ended when the parties entered arbitration.

Impasse after impasse

Evans told Investigative Post his union was ready to negotiate a new agreement even before the current contract expired in July 2019. The city, he said, was largely unresponsive.

In August of that year, the union declared an impasse in negotiations, which triggered mediation by the state Public Employee Relations Board, or PERB.

During mediation (and again, later, in arbitration) the union sought pay increases of 3.5 percent per year. The previous contract, negotiated in 2015, had given officers a 3 percent raise each year.

The city's counter-offer: nothing.

The city's representative in the mediation was then Corporation Counsel Tim Ball, who resigned earlier this year to take a job as a clerk for state Supreme Court Justice Gerald

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Rivera, the Police Oversight Committee chair, called that move “almost insulting.”

“I know it’s insulting to the police union,” he said.

“Any time you ask for something, the other side’s going to want something in return. When you go in with zero ... there’s no sense negotiating with you.”

In February 2021, the PBA requested compulsory interest arbitration to resolve the dispute. The only question the PBA and the Brown administration put before the arbitration panel was pay.

The panel comprised three members: one picked by the PBA, one picked by the city, and a chairperson agreed upon by both parties, who represented PERB.

The PBA chose one of its attorneys, John Gilmour, who is also an Erie County legislator. The city chose Sean Beiter, then an attorney with the firm Goldberg Segalla, now director of labor and employee relations for Erie County Medical Center.

Because two of the panel’s members were partisan, the panel’s chair, attorney Thomas Rinaldo, was effectively the sole arbiter of the arguments made in four hearings that ensued between December 2021 and March of this year.

Much of the argument revolved around the city’s ability to pay.

The PBA noted that Donna Estrich, then the city’s finance commissioner, testified to the panel that the city had budgeted money to cover 2 percent raises for police in each of those years, in anticipation of the cost of a new contract.

On top of those earmarked funds, the PBA maintained, city coffers have been shored up in the last two years by the release of long-withheld casino payments to the city from the Seneca

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“Not once in the entirety of [her] testimony ... did Commissioner Estrich state that the City did not have the ability to pay for the PBA’s petitioned-for raises,” the PBA argued.

The city’s counter-argument also relied on Estrich’s testimony — just different parts of it.

Estrich testified that federal COVID relief funds were “one-shot revenues,” while raises for police would need to be covered by recurring income. State aid, the city’s largest recurring source of revenue, has been flat for a decade, she noted, and sales tax revenues are volatile.

Further, the city argued that the arbitration panel would overstep its bounds if it suggested the city should pay for police raises by increasing taxes on property owners.

To do so, the city’s lawyers said, “would be intruding upon the formulation of public policy by elected officials of the City of Buffalo.”

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Estrich described city finances as “delicate.” As evidence, the city offered an April 2021 report by Standard and Poor’s, which gave the city a good credit rating, but also noted the Brown administration’s struggles to find recurring revenue to match growing expenses, its “weak budget performance,” and the financial threat posed by rising pension and healthcare costs.

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Estrich said the PBA's proposed 3.5 percent raises would cost the city \$16.7 million in retroactive pay and \$7.2 million annually going forward. An expert witness for the PBA pegged the cost of retroactive pay at \$15 million, a figure more in line with the raises the panel eventually awarded.

To pay for that, the city likely would need to dip into its reserve funds, Estrich said. Those reserves have been bolstered the last two years by windfalls, but only after being drained for a decade to plug chronic shortfalls in revenue.

Rinaldo, the panel's chairperson, apparently was not swayed. The panel's July 18 award concluded the city could afford to pay.

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PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Compulsory Interest
Arbitration between

OPINION & AWARD

BUFFALO POLICE BENEVOLENT
ASSOCIATION, INC.,

-and-

CITY OF BUFFALO, NEW YORK

PERB Case No. IA2020-012; M2019-080

BEFORE:

Thomas N. Rinaldo, Esq.
Public Panel Member and Chairman

Sean P. Beiter, Esq.
Public Employer Panel Member

John J. Gilmour, Esq.
Employee Organization Panel Member

APPEARANCES:

For the Buffalo Police Benevolent Association, Inc.

Gilmour & Killelea, LLP
Daniel M. Killelea, Esq.

For the City of Buffalo, NY

Goldberg Segalla, LLP
Kristin Klein Wheaton, Esq.

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retroactive raises of 3 percent for the fiscal year running from July 2019 to July 2020, and 3.25 percent for the fiscal year running July 2020 to July 2021.

Beiter, the city's representative on the panel, filed a written dissent that was published along with the award. He wrote the panel — in which he had “no meaningful input” — instructed the city to “rob Peter to pay Paul.” Beiter said the panel was telling a municipality to “rearrange and/or eliminate other budget items as [the panel] sees fit in order to fund the union's requested wages.”

He said he considered the wage increases “excessive,” given the city's finances and the lack of “any concession or offset to the City.”

“For all of the above reasons, I vehemently dissent,” Beitter wrote.

Negotiations begin again

Michael DeGeorge, spokesperson for the mayor and the police department, told Investigative Post the city would not seek to vacate the panel's award.

“The City's goal is to have the new pay rates for PBA members implemented mid-October, with the additional goal of issuing retro checks shortly thereafter,” DeGeorge wrote in an email.

The panel's award is not a new contract. Both sides are now back at the table, trying to negotiate a new agreement.

Asked what concessions the city might seek from the union during the new round of talks — a residency requirement, annual performance reviews, etc. — DeGeorge declined to comment.

DeGeorge also would not say if the city intended to use federal COVID relief funds to provide extra pay to police and other emergency personnel for their work during pandemic shutdowns.

Gilmour, the PBA attorney, said he's optimistic this fall's talks will be more fruitful than the last three years of negotiations.

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